February 3, 1975, contained terms and conditions similar to those contained in the letter of December 13, 1974.

When the ship arrived at Jakarta the Indonesian authorities refused entry of the goods into Indonesia because they did not tally with the description in the "Proforma Invoice" as endorsed by the Indonesian Embassy. The goods were sent back to Singapore and eventually were sent to another Indonesian port. The respondents failed to pay the appellants in accordance with the arrangement contained in the three letters above referred to.

Rajah J. found that the "whole operation was designed expressly by the parties herein and the Indonesian buyer to evade Indonesian customs duties" and dismissed the appellants' claim on the ground that the contract between the parties was illegal and void.

It is contended on behalf of the appellants that there was no evidence or insufficient evidence that the contract was illegal or designed to evade Indonesian customs duties or that they knew it was illegal or would result in evasion of Indonesian customs duties. We do not accept this contention. It is plain from the contract documents and from the undisputed evidence before the trial judge that the declared invoice value of the goods in the "Proforma Invoice" presented to and approved and endorsed by the Indonesian authorities was very much less than the agreed purchase price to be paid by the Indonesian importer to the Taiwan seller. Apart from the evidence at the trial to the effect that the appellants knew that the purpose of undervaluing the goods was to evade payment of the proper Indonesian customs duties and lent themselves to the fulfilment of this purpose by providing the finance to enable the purchase and importation of the goods into Indonesia and by signing the "Proforma Invoice" and the other essential documents in connection with shipment of the goods to Jakarta, the clear inference from the documentary evidence before the trial court supports the trial judge's finding that the appellants were actively involved in an operation to evade Indonesian customs duties.

The case of *Fielding & Platt Ltd* v. *Najjar*[1] relied on by the appellants is distinguishable. In that case the contract was between Fielding & Platt, an English company and a Lebanese company for the English company to sell to the Lebanese company an aluminium extrusion press for £235,000. Payment was to be made by six promissory notes given by the managing director, Mr. Najjar, personally of the Lebanese company. Najjar never paid the first promissory note or any of the others. The English company suspended work on the contract and sued Najjar in respect of the first two notes. Najjar raised a defence of illegality, saying that it was his intention to breach the laws of Lebanon and that the English company were parties to it. In order to import the extrusion press he had to get an import licence from the Lebanese authorities. He had a licence to import a £2,000,000 rolling mill but not a licence to import an extrusion press. He said the English company agreed to help him to import an extrusion press without his having a licence to do so by agreeing to put up a false invoice.

It was held that the contract which was concluded on July 13, 1965 contained no obligation on the English company to invoice the goods as part of a rolling mill. It was also held, even if it were a term, that there was no evidence to suggest that the English company were implicated in this illegality.

It has been settled law since *Foster* v. *Driscoll*[2] that if a party to a contract actively engages in an illegal adventure to get goods into a country in breach of the revenue laws of that country, the court will not assist the parties to the adventure by entertaining or settling any dispute between the parties arising out of the contract.

In our judgment the appeal must be dismissed with costs.

Appeal dismissed.

Solicitors: *Wan & Choo; C.K. Phua.*

THE "EASTERN LOTUS" *ex* "SPRING FLOWER"; URZAD MORSKI W. SZCZECINIE v. MOSCOW NARODNY BANK LTD.

[C.A. (Wee Chong Jin C.J., Chua & Rajah JJ.) January 17, 1980]

[Singapore — Civil Appeal No. 55 of 1979]

Shipping Law — Admiralty proceedings — Arrest of vessel — Several claims against insolvent owners of vessel — Law governing order of priorities — Appellants ranked above respondents in claim but intervened later — Order of priorities not immutable — Court allowing respondents' claim — Appeal.

In this case the vessel "Eastern Lotus" was at the material time flying the Singapore flag and entirely manned by foreign crew. On January 19, 1978, the said vessel was arrested by the Sheriff for non-payment of agents' remuneration. On February 23, 1978 the plaintiffs obtained a commission for appraisement and sale of the vessel.

On March 3, 1978, the respondents as mortgagees of the vessel intervened. On March 17, 1978 they obtained an Order of Court for the payment via the Sheriff of (a) the wages and disbursements of the master and crew (b) the repatriation expenses of the master and crew, and (c) the premia for port risk insurance. It was also ordered (1) that the respondents be subrogated to the rights of the master and crew against the vessel in respect of all monies paid by the respondents pursuant to the order and that all monies so paid shall rank as sheriff's expenses against the proceeds of sale and that the respondents be entitled to payment thereof accordingly and (2) that the costs of the respondents in the motion shall rank after the Sheriff's expenses and the plaintiffs' costs up to and including appraisement and sale be in priority to all other claims.

On June 30, 1978 the appellants filed a caveat against the release and payment out of the proceeds of sale. They intervened in the action on January 15, 1979, having commenced an admiralty action in 1978 against the owners of the vessel in respect of the damage done by the vessel to a bunker pier of theirs at Swinoujzcie, Poland.

The respondents on March 12, 1979 filed a notice of motion for payment out of the sum of $218,817.50 expended by them pursuant to the Order of Court of March 17, 1978. Sinnathuray J. allowed the respondents' claim. The appellants appealed.

Held, dismissing the appeal: (1) in spite of the general order of priorities, a court, in the exercise of its admiralty jurisdiction, is entitled to have regard to the equities in any particular case before it;

(2) it is common ground that in general a claimant for damage caused by the ship has priority over a claim for wages. However, in the present case, the learned judge was right in concluding that on the facts, it would be an injustice if the respondent were deprived of the payment they made, acting on the order of court of March 17, 1978.

Cases referred to:-

(1) *The General Serret* (1925) 23 Ll. L.R. 14.
(2) *The Fairport* [1965] 2 Lloyd's Rep. 183, 184.
(3) *The Vasilia* [1972] 1 Lloyd's Rep. 51.
(4) *The Parita* [1964] 1 Lloyd's Rep. 199.
(5) *The Olga* (1921) 7 Ll. L.R. 130.
(6) *The Rene* (1922) 12 Fl. L.R. 202.
(7) *The "Linda Flor"* 166 E.R. 1150.
(8) *"The Elin"* [1883] P. 129.

HIGH COURT.

Eddy Teng Jong Pu for the applicants.

G. Pannirselvam for the respondents.

Cur. Adv. Vult.

Sinnathuray J.: The facts relating to the background of the two motions are these. The m.v. "Eastern Lotus" (the vessel) was at the material time flying the Singapore flag and entirely manned by foreign crew. It was arrested by the plaintiffs in this admiralty action on 19th of January 1978 for non-payment of agents' disbursements. On 23rd of February 1978, the plaintiffs obtained the commission for appraisement and sale of the vessel.

On March 3, 1978, Moscow Narodny Bank (the applicants), as mortgagees of the vessel, intervened in the action. On 17th of March 1978 they applied by way of notice of motion and obtained an order of court (the said order) for the payment via the Sheriff of (1) the wages and disbursements of the master and crew, (2) the repatriation expenses of these persons, and (3) the premia for port risk insurance. Included in the said order were two directions which are now contentious. They are: (1) that the wages and disbursements of the master and crew be treated as Sheriff's expenses and rank as Sheriff's charges, and (2) that the costs of the applicants in making the application to rank after the Sheriff's expenses and the plaintiffs' costs up to and including appraisement and sale but in priority to all other claims.

For the purpose of that hearing on 17th of March 1978, the applicants served the notice of motion and the two supporting affidavits (one by the master on behalf of himself and the crew, and the other by the solicitors for the applicants) on the Sheriff, the plaintiffs' solicitors and on the solicitors for the only other then caveator in the action. None of them objected to the application, and the court made an order in terms of the prayers in the motion.

Pursuant to the said order the applicants laid out the following sums:

(i) $146,828.62, wages and such like for the master and crew;
(ii) $16,334.10 for repatriation of the master and crew;
(iii) $55,654.78 for the insurance premia.

It is not clear from the affidavits when the master and crew were paid and repatriated. But pursuant to an order of court of 14th of August 1978, the vessel was sold by the Sheriff on the 22nd of August 1978 for $1,220,000.

In the meantime solicitors acting on behalf of Urzad Morski W. Szczecinie (the respondents), the damage claimants, on 30th of June 1978 filed a caveat against the release and payment in this action, and became interveners on 15th of January 1979. The respondents claim that on the 25th of August 1976 the vessel damaged a bunker pier of theirs at Swinoujzcie, Poland. The respondents have commenced an admiralty action (Admiralty *in rem* 488 of 1978) against the vessel in respect of the claim.

I now come to the two motions. The first notice of motion filed on 12th of March 1979 by the applicants is for the payment out of the sum of $218,817.50 expended by the applicants pursuant to the said order. The second notice of motion filed on 22nd of March 1979 is by the respondents who in effect object to the payment out of the sum to the applicants. The respondents seek an order either to delete the directions contained in the said order or for a declaration that the said directions do not apply to the respondents.

At the commencement of the hearing, counsel for the respondents stated that he was not disputing the insurance premia of $55,654.75, and, in the course of the hearing, he properly conceded the repatriation expenses of $16,334.10, as payable as Sheriff's charges.

The general principles of law governing priorities in admiralty proceedings, as administered in countries that follow the common law system, are well established. They have been developed over many decades by case law and settled admiralty practices. Broadly the order of priorities are as follows:

(1) Sheriff's charges.
(2) Plaintiff's costs of and incidental to the arrest of the vessel.
(3) Possessory lien.
(4) Claim for salvage.
(5) Damage claim arising from collision.
(6) Wages and disbursements of master and crew.
(7) Claim of mortgagee.

Then come the claims of the other interested parties.

The applicants by the said order obtained, as I have said, priority for the wages and disbursements of the master and crew to rank as Sheriff's expenses, and accordingly as Sheriff's charges. At that time except for the Sheriff whose charges ranked first, the claims of the other two parties who were served with the papers were not within any one of the seven of the order of priorities I have mentioned. It is understandable, therefore, that none of them objected to the application.

The applicants were mortgagees of the vessel. Their claim against the vessel was for US$1,212,982.35. The commission for appraisement and sale of the vessel had been issued. The applicants no doubt had a fair idea of the value of the vessel. In the event the vessel was sold for S$1,220,000. But at that time the crew were on the vessel. The applicants were naturally

anxious that the crew leave the vessel to bring to an end the drain on the proceeds of the sale of the vessel. To use the words of Hill J. in *The General Serret,*[1] "it seemed idiotic for the ship to be lying up with a heavy wages claim against her running on and nothing done, while the owners were admittedly unable to pay current charges ... something must be done with regard to the crew. In the last resort [I] would direct the Admiralty Marshal to repatriate them and make the costs part of his charges, which would be the first claim against the ship."

Then again, the vessel could not be sold until the crew left the vessel, and being foreign crew they will not leave the vessel until arrangements are made for their repatriation. As Hewson J. said in *The Fairport*[2]: "It is no good selling a ship with a sitting tenant." The commission for appraisement and sale would have to lie in the Registry until the crew left the vessel before the sale can be advertised. (See also: *The Vasilia*[3]).

In *The Fairport* there was another difficulty before the vessel could be sold: the classification society intended to hold up classification of the vessel until its fees were paid. Hewson J. directed the Admiralty Registrar to pay the classification society's fees and directed that such sum spent should be recovered as his expenses and with first priority. Again, in *The Parita*[4] Hewson J. made a similar order.

There was only one thing for the applicants to do. That was to apply to the court for sanction. This they did. They served the papers on the Sheriff. His primary duty is to protect and preserve the *res* under arrest, for he had a valuable object within the jurisdiction. He did not attend the hearing. He did not because he had no objection to the application. He must have concluded that it was a reasonable and proper application. Nay, he must also have concluded that it was a necessary application. The applicants had come forward, as principal creditors, for leave to pay off the master and crew and have them repatriated. For the Sheriff, if the order was granted, for the reasons I have given, it will facilitate him in carrying out his duties. He would be able to execute the commission for the appraisement and sale. And so, the application had his blessings.

Why did the applicants make the application? As I have said they were the principal creditors. More relevant and pertinent, as proceedings stood then, their claim ranked third in the order of priorities. In between the Sheriff's charges and their claim was the claim for wages of the master and crew which, in so far as the applicants were concerned, for the reasons I have given, were adversely affecting their claim. It is submitted and I accept that if the applicants had known then of the respondents' claim, they would not have gone to court on 17th of March 1978. They would have bowed out of the proceedings as the claim of the respondents, as damage claimants, ranked ahead of that of the applicants, and, having regard to the quantum of claim, the whole of the proceeds of the sale of the vessel would go to the respondents.

But at that time, the respondents were no where in sight. The applicants went to court. They obtained the said order. The court sanctioned that if they paid the wages of the master and crew, their disbursements would be Sheriff's charges. They acted on the said order and made the payments. It enabled the Sheriff to sell the vessel. The proceeds of sale are in court. They now ask for payment out of the sums they had expended from the proceeds of sale. It is resisted by the respondents.

The submissions for the respondents run thus. They say that there is no authority for wages of master and crew to be made as Sheriff's charges. They assert that if the wages are treated as Sheriff's expenses, it would alter the established principles of law governing priorities in admiralty proceedings. It is submitted that if the court that made the said order had been given proper guidance, it would not have given an order that the monies paid pursuant to the rights of subrogation should be elevated to the status of Sheriff's charges. In this context it is submitted that the authorities show that where a claimant, under an order of court, pays the wages of the crew and repatriates them, the claimant is only subrogated to the rights of the crew up to the amount paid, and those amounts paid will rank only as wages as against the proceeds of sale.

Now, it would appear that there is no direct authority in the Law Reports for wages of a crew to rank as Sheriff's charges. But I do not accept that the effect of the said order has altered the established principles of law governing priorities in admiralty proceedings. Besides the cases of *The General Serret* where repatriation expenses were made, Admiralty Marshal's charges and *The Fairport* where classification society's fees were held recoverable as first priority, there is the case of *The Olga.*[5] In this case the Admiralty Marshal sold the vessel and the proceeds of sale were in court. The court ordered the wages of the crew, their repatriation expenses and their board and lodging to be paid out of the fund in court. In another case *The Rene*[6] the claimants had supplied ballast to the vessel after arrest to enable her cargo to be discharged and priority was sought for the expenses. The claim was rejected, but Hill J. said, "if it had been shown that the ballasting was done at the instance of the Marshal he would have been entitled to include the cost of ballasting in his expenses. But it was not done in that way." The effect of the decision is, as I see it, that if an application had been made to court, and the court was satisfied that the ballasting was a necessary operation in the preservation of the ship under arrest, the ballast claim which ranks very low in the order of priorities would have moved right to the top to rank as the Marshal's expenses.

As I view the authorities, they point to the direction that whilst the general order of priorities in admiralty proceedings are well established, a court can, however, under its inherent jurisdiction, depending on the facts of a particular case, for good reasons, alter the order of priorities. In other words, the order of priorities is not immutable.

It is for good reason that it must be so. Take the case of a foreign crew as in this case. They can refuse to be repatriated until their wages are paid. In these enlightened days it cannot be said that such a stand taken by a crew can be said to be unreasonable.

It needs no elaboration than to say that political, economic and social conditions are markedly different from port to port of countries. Given these circumstances, it may not be practical to ask a court for a direction that the repatriation expenses be the Sheriff's charges, without including a request that part or whole of the wages of the crew be also treated as Sheriff's charges. (See British Shipping Laws by *McGuffie* Vol. 1 page 120 para. 274). In the present case, the court ordered that the Sheriff's charges include the whole of the wages of the master and the crew. The facts were before the court, as set out in the affidavits. Not only that. Unlike in England, when an interlocutory matter comes before a court, all the papers of the proceedings, the whole file, is before it. It is to be presumed therefore that the court would be informed of the contents. Moreover, the Sheriff, an officer of the court, the guardian of the *res*, had raised no objection. The order sought, as I have demonstrated, does not violate general principles. It is not for the court to gaze into a crystal ball to see whether there are claimants yet to come like the respondents. There is nothing in the books that a court must protect prospective claimants. It is therefore that I hold that there is no merit in the submission that whatever further guidance could have been given, the court would not have made the said order.

Another submission for the respondents is that, in admiralty proceedings, a party who has an interest in the action can intervene and make his claim within the time prescribed by an order of court, before the proceeds of sale are actually disbursed. In this case, as no such order has been made, it is submitted that the respondents can properly make their application now to resist the payment out to the applicants.

I agree with counsel for the respondents that the respondents can properly intervene in these proceedings. I also agree with him, that they can lodge their claim for a share in the proceeds of sale of the vessel as the order to determine priorities has yet to be made. But I do not agree with him that the respondents have any ground to resist the payment out to the applicants. In my judgment, a party who intervenes in admiralty proceedings must find the *res*, or the proceeds of sale of it, as *in esse* in the state it is, at the time the party comes into the action, that is to say, subject to all the encumbrances attached to it. It is on this rationale, as I see it, that the principles relating to priorities in admiralty proceedings have been established. It is thus that a claim of a mortgagee of vessel ranks below that of a claim for salvage, a claim for damage arising from collision and a claim for wages of crew. And, in this context, any order of court must be paramount.

Let me view it in another way. If in the case of *The Olga*, the Marshal who was ordered by the court to pay the wages of the crew, etc., out of the fund in court, had disbursed the sums, and a claimant who ranked ahead of the claim of the crew intervened, the claimant, it is conceded for the respondents, can do nothing about it. Why should it make any difference if the claimant had intervened after the order and before the Marshal had actually made the payments? In this case, the applicants came forward, obtained the said order and disbursed sums of money for repatriation of the crew, premia for port risk insurance, and paid the wages of the master and crew. The first two items of expenditure are not challenged. I rule that last item also cannot be challenged.

I have, I think, sufficiently shown why in law the respondents cannot resist the payment out. But law aside, on the facts I have given, it would be an injustice if the applicants are now deprived of the payments they made, acting as they did, on the said order. By their payments, they had preserved the *res*, and halted the drain on the proceeds of sale. By the respondents intervening in the proceedings, they having a prior claim to the applicants, the proceeds of sale are there for the respondents, and nothing for the applicants, as there are insufficient funds to meet both the claims I see no reason why the applicants should be further prejudiced as, as it turns out, they have been the benefactors for the respondents.

For the reasons I have given, I direct the payment out to the applicants of the sum of $218,817.50 from the proceeds of sale in court. The prayers sought in the respondents' notice of motion are dismissed.

The respondents appealed from the above decision.

COURT OF APPEAL.

G. Pannirselvam for the appellants.

Lai Kew Chai for the respondents.

Wee Chong Jin C.J. (delivering the judgment of the Court): On January 19, 1978 the vessel m.v. "Eastern Lotus" was arrested by the Sheriff in this action for non-payment of agents' remuneration. It flew the Singapore flag but was entirely manned by a foreign crew. On February 23, 1978 the plaintiffs, United Enterprises & Shipping (Pte) Ltd. obtained a commission for appraisement and sale of the vessel.

On March 3, 1978 Moscow Narodny Bank, the respondents in this appeal, as mortgagees of the vessel, intervened in the action. On March 17, 1978 they obtained an order of court for the payment via the Sheriff of (a) the wages and disbursements of the master and crew, (b) the repatriation expenses of the master and crew, and (c) the premia for port risk insurance. It was also ordered (1) that the respondents be subrogated to the rights of the master and crew against the vessel in respect if all monies paid by the bank pursuant to the order and that all monies so paid shall rank as Sheriff's expenses against the proceeds of sale and that the respondents be entitled to payment thereof accordingly and (2) that the costs of the respondents in the motion shall rank after the Sheriff's expenses and the plaintiffs' costs up to and including appraisement and sale be in priority to all other claims.

On June 30, 1978 Urzad Morski W. Szczecinie, the appellants in this appeal, filed a caveat against the release and payment out of the proceeds of sale of the vessel. They intervened in the action on January 15, 1979, having commenced an Admiralty action in 1978 against the owners of the vessel in respect of damage done by the vessel to an installation known as the Bunker Station Landing Stage at Swinoujzcie, Poland.

The respondents on March 12, 1979 filed a notice of motion for payment out of the sum of $218,817.50 expended by them pursuant to the order of court of March 17, 1978. The appellants on March 22, 1979 filed a notice of motion seeking to delete the directions for payment out to the respondents contained in the order of March 17, 1978 or for a declaration that the said directions do not apply to the appellants. These two motions were heard before Sinnathuray J. who made an order in terms of the respondents' motion and dismissed the appellants' motion. The appellants now appeal.

It is common ground that the owners of the vessel are insolvent. It is common ground that the general order of priorities as developed by the authorities and settled admiralty practice are now well established. The question is whether the order of priorities as so established are now immutable or whether a court, under its inherent jurisdiction, depending on the facts, can alter the order of priorities in any particular case. It is common ground that in general a claimant for damage caused by the ship has priority over a claim for wages. The authority for this is the case of the *"Linda Flor"*.[7] The judgment of Dr. Lushington reads as follows: —

"The facts in this case, so far as they relate to the question at issue, are the same as the facts in the case of the 'Chimaera'; and I was then of opinion that the mariners could not maintain their claim to the prejudice of the parties who had obtained a decree in the cause of damage. As the same point has been again mooted, the question for my consideration is, whether I see sufficient cause to depart from that judgment. I adhere to my opinion as expressed in the case of the 'Chimaera', and I do so especially for the following reasons: that the mariner, besides a lien on the ship for his wages, has also a right of suing the owner personally; that in the case of a foreign ship doing damage and proceeded against in a foreign country, the injured party has no means of obtaining redress save by proceeding against the ship herself, which I apprehend is one of the most cogent reasons for all our proceedings in rem; that, in a case where the proceeds of a ship are insufficient to compensate for the damage done, to allow the mariners to take precedence of those who have suffered damage would be to exonerate so far the owners, to whom the damage is imputed, at the expense of the injured party — the wrong-doer at the expense of him to whom wrong has been done. For, as to the mariner, what is the hardship to which he is exposed? It is true he fails in his remedy against the ship, but his right to sue the owner remains unaffected. These reasons satisfy my mind as to what my decision ought to be, and they constitute the grounds of that decision; it is, however, not to be forgotten that in all these cases of damage, or nearly all, the cause of the damage is the misconduct of some of the persons composing the crew. This is not the case of a bankrupt owner; it will be time to consider such a case when it arises."

Dr. Lushington's decision was approved by the Court of Appeal in *"The Elin"*[8] where Brett M.R. in his judgment said:

"If the Admiralty Court allowed seamen to recover wages out of this fund it would in so doing give a relief to the owner of the wrong-doing ship in the hands of the court. Dr. Lushington, in exercising the wide equitable maritime jurisdiction of the Admiralty Court, came to the conclusion that it would be unjust to the owner of the injured ship if he allowed the fund against which the lien for damage has priority to be diminished by a payment of wages. This he did quite independently of any mere questions of priority. He did it on the principle of acting justly to the owner of the injured ship."

However, it appears from these two decisions that a court, in the exercise of its Admiralty jurisdiction, is entitled, in spite of the general order of priorities, to have regard to the equities in any particular case before it. In the present case it is conceded that the owners of the vessel are insolvent. The crew were all foreign and the Sheriff could not carry out the commission for appraisement and sale without first making arrangements for the crew to leave the vessel and for their repatriation. The claim of the appellants for damage to an installation in Poland was not known to the Sheriff, the mortgagees, the owners of the vessel or the court when the court made the order of March 17, 1978. The respondents as mortgagees were under no obligation to make funds available to the Sheriff to carry out the commission for appraisement and sale. They made full disclosure of all the facts within their knowledge. They were entitled to protect their property and did not make the payment as a volunteer but after consultation with the Sheriff and pursuant to an order of the court. The appellants, on the other hand, merely relied on the established order of priorities and that they would be seriously prejudiced by the order of court. They have not indicated in their affidavit when they suffered the damage to the installation in Poland. They merely denied that they have been sluggish or deliberately lying low with a view to inducing someone else to expending money to his detriment.

We agree with the conclusion arrived at by Sinnathuray J. that on the facts before him it would be an injustice if the respondents are now deprived of the payment they made, acting on the order of court of March 17, 1978. In the result the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Drew & Napier; Lee & Lee.*

JAMSHID BIN AJMAIN v. THE PORT OF SINGAPORE AUTHORITY

[O.C.J. (D'Cotta J.) September 26, 1979]
[Singapore — Civil Suit No. 71 of 1979]

Employment — Port of Singapore Authority constable — Suspension from duty as result of charge under section 384 of Penal Code (Cap. 103) — Acquittal on said charge — Whether plaintiff entitled to salary during period of suspension — Auxiliary Police Regulations 1961, regs. 6(1) & 8.

The plaintiff in this case claimed against the defendants for arrears of salary due to him under a contract of employment with the defendants. The plaintiffs joined the defendants' Auxiliary Force as a recruit on October 1, 1969 and was confirmed in the rank of constable on April 1, 1970. On July 13, 1974, he was suspended from duty as a result of a charge against him under the provisions of section 384 of the Penal Code (Cap. 103). The plaintiff was subsequently acquitted at an inquiry held under regulation 6(c) of the Auxiliary Police Regulations, 1961.

From October 1, 1975, the plaintiff's solicitors had been in communication with the Attorney-General's Chambers, the Commissioner of Police and the defendants in an attempt to ascertain the plaintiff's position and whether or not he would be re-instated by virtue of the fact that he was acquitted at the disciplinary inquiry. Nothing was heard from them and on June 17, 1976, the plaintiff's solicitors wrote to the defendants enquiring whether or not the plaintiff was still a member of the Port of Singapore Authority Police Force. The defendants replied, "whether or not your client is still a member of the P.S.A. Police Force is a question of law to be ascertained in all the circumstances of this case".